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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

ROBERT J. CIAFFONI,
PETITIONER

v.

ELIZABETH C. COWDEN,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE

SUPREME COURT OF THE COMMONWEALTH

OF PENNSYLVANIA

PETITIONER'S REPLY BRIEF

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I. By The Improper Substitution of "Respondent, Estate of Paul Ciaffoni" for "Elizabeth C. Cowden, Respondent," On Page One of Respondent's Brief in Opposition, Respondent Attempts to Insure The Continued Misuse Of Estate's Funds To Finance Respondent's Defense Of A Fraud Perpetrated By And In Behalf Of The Respondent, And Upon The Legal Heirs Of Paul Ciaffoni, Of Which The Petitioner Is One.

1. The referenced improper substitution of "Estate--" for "--Cowden" on page one of Respondent's brief is one of the more readily apparent, and obviously important subterfuges condoned by a questionably motivated and accommodating Pennsylvania judiciary. The subterfuge is intended to continue to make the estate responsible for expenses incurred by Respondent in her capacity as the proponent of the questioned probated will dated 10 May 1968. A comparatively monetarily miniscule, and yet-to-be-instituted trust has been the "excuse" to obligate the estate for the prodigious sums of money, primarily in the form of legal fees, incurred by, and behalf of Respondent in her compacity as the proponent of the 10 May 1968 questioned probated will.

2. The subterfuge was initiated under the aegis of Washington County Common Pleas Court Judge Paul A. Simmons. Judge Simmons presided over the estate will contest proceedings from its inception in the Fall of 1974 until his ascension to the U.S. District Court of Western Pennsylvania, on 2 May 1978. The illegal practice of the misuse of estate funds to finance Respondent's costs has thus been "insured" by the aforesaid manipulative substitution. The same was formerly complained of to a non-responsive Pennsylvania judiciary. For more about the collegial relation-

appearances of judicial bias,[2] and especially so when that charge is unrebutted, as in the instant case.

6. On page 5 of Respondent's 18 January 1995 brief reference is made to Petitioner's 18 November 1992 "Second Motion for New Trial, *Nunc Pro Tunc*," as a repeat presentation of "Robert J. Ciaffoni's theories of "comparative stylistics" and "gramformprints." The following two numbered sub-items, (a) and (b), minimally illustrate that the essence of the referenced "theories" are not restricted to the Petitioner, nor are the applciable "theories" restricted to comparative stylistics and gramformprints:

a. See item III, page 7, below.

b. Appendix K is Petitioner's latest on-going codifying rationale on applying physical evidence of stylistic alternatives in grammar and format to nonidentity-of-typist solutions to questioned type-writings. Appendix K is titled "Proof Beyond a Moral Certainty." "Proof Beyond..." is readily and fully adaptable to the instant case. The descriptor "proof beyond a moral certainty" is applicable in defining the absence of Gray as the typist of the pair of questioned wills. The "supplanting typist" is applicable in defining the presence of Respondent Cowden as the typist. "Proof Beyond..." is a complementary extension of Petitioner's writing titled "Socratic Absolutism in Solutions to Questioned Typewritings Via Nonidentity and Negative (Versus Affirmative) Stylistic Habits." [See H29.] For a 35-count of "[s]ome of the more evident deviations in the stylistics of grammar and format of the

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[2]*Commonwealth Coatings Corp. v. Continental Casualty Co.*, 89 S.Ct. 337 (1968).

'68 will when compared to the invariable habits and routine practices manifested in the DiSalle-Gray office, will and deed exemplars," see Appendix F, R.209a, item XXVII and R.109a-115a. R.109a-115a is item III of Petitioner's "(First) Motion For New Trial, Nunc Pro Tunc" submitted to the Pawelec Court on 3 September 1990. [See R.101a] To this day, Judge Pawelec has not responded to that 3 September 1990 motion.

7. In general, the "therories" underpinning Petitioner's ongoing codification of "comparative stylistics" and "gramformprints" ("C.S. & GFP") are substantially premised on habit and routine practice evidence, wherein the focus is upon nonidentity-of-typis solutions to questioned writings. Desirably that questioned writing is a realty disposing will under the logo of a sole practitioner's law office, singly staffed by a longtime (at least four years) secretary-typist, who turns out scores of deeds and wills annually. Yet more desirably, there are availabale from the public record, a minimum of five each of contemporaneously dated (within two years of the questioned will) deed and will exemplars predating, and a like number, postdating the questioned will, all under the same office logo, and all dated during the employment period of the same longtime secretary-typist. Even more desirably, there is a second will dated months apart from the initial one. Ideally, as in the instant case, there are substantially greater numbers of deed and will exemplars than the desirable minimum, and their numbers not only postdate and predate the pair of questioned wills, but they also interdate that same pair.

In the instant case, during the contemporary period (1Jan66-31Dec69) chronologically bracketing in the pair of questioned wills (29Nov67 and 10May68)

there are some 218 qualifying deed and will exemplars: 164 deeds and 54 wills. Of the 164 deeds: 81 predate, 27 interdate, and 56 postdate the pair of questioned wills. Of the 54 wills: at least 23 predate, at least 8 interdate, and at least 19 postdate the pair of questioned wills. The four remaining wills (four-digit year dates only) enlarge one or more of each of the three listed categories. For more detail and the comparative stylistic significance of the "four-digit year dates," see, *inter alia*, Appendix F, R.87a, items E and F. on the pair of questioned wills proffered by the advocates thereof. [See, *inter alia*, Appendix F, R.87a, items E and F.]

The "substantially premised" role of habit and routine practice evidence in *Commonwealth v. Burns*, 409 Pa. 619 (1963), a successfully prosecuted criminal case, speaks to the unquestionable propriety of that same type of evidence in the instant civil case. At page 623, the Pennsylvania Supreme Court states:

> [T]he Commonwealth's purpose in submission of its evidence was to establish the corpus delecti by showing the habits and way of life of Marie Coleman and the consistency of her practice[s]....Her customs were well known...
>
> The Commonwealth advances its position of establishment of the corpus delecti by showing a...woman with a consistent pattern of living for many years and a sudden and abrupt termination of such pattern...

At page 626, the record reads:

> [T]he corpus delecti, like other facts, may be

established by circumstantial evidence.

The Commonwealth's prosecutor in *Burns* was Philadelphia Attorney Richard A. Sprague, the present and consistent attorney for the Respondent in the instant case since 1977. Consider the foregoing in light of DiSalle and Sprague's hypocritical, castigating testimony relative to stylistics evidence in the instant case. For DiSalle, see Appendix F, R.302a-306a, wherein at R.305a, DiSalle states: "I thought it was something silly..." and at R.306a: "I just thought it was a bunch of nonsense...." For Sprague, see D44-D70, and D35-D38, items 3, 4, 5 and 6. For DiSalle and Sprague, see, *passim*, G7-G17.

III. The Combined, Ongoing Enlargement OF Rationale And Evidence In Establishing The Fraud Of Determinant Perjured Testimony, As To The Physical And Testamentary Origins Of The Pair Of Questioned Wills Proffered By The Advocates Thereof, Speaks Loudly And Clearly To Enhance, And To Be Enhanced By, "Robert J. Ciaffoni's Theories Of 'Comparative Sytlistics' And 'Gramformprints,'" ("C.S. & GFP")

1. Illustratively, of the 37 "Harbingers of Comparative Stylistics" listed in PART III (F2, R.178a), only item 12 (R.184a), Scientific Evidence in Criminal Cases, Moenssens, et al, Third Edition (1986) derogates (however incongruently), rather than endorses, the tenets of comparative stylistics. Per its 15 January 1995 release, the successor Fourth Edition, retitled *Scientific Evidence in Civil and Criminal Cases*, implicitly reverses its position with the following paragraph at page 258 thereof:

> Questioned document examination should

APPENDIX J

Excerpt from *Rubinsky v. Kosh*, 296 Pa. 285, 289 (1929).

The contents of *Rubinsky* is annotated with respect to nomenclature of the status of the relevant players and unobtrusive, descriptive data. Annotations are indicated by square brackets.

[Petitioner's] pleadings fully stated the facts from which [the fact finder] could properly find the fraud; but it is not necessary to specify them here, since [Respondent] (by her statement of the questions involved, which limits the scope of [Respondent's Reply Brief]: *Com. ex rel. v. Snyder*, 294 Pa. 555), does not question their sufficiency to show the fraud, but only denies [Petitioner's] right to prove them in the present state of the record. If their sufficiency had been challenged, we would unhesitatingly reach the same conclusion on the point as the [Petitioner] did.

[Respondent's] first contention is that the [12 January 1993] decree of the orphans' court [Judge Pawelec, presiding] [dismissing the Petitioner's 18 November 1992 "Second Motion for New Trial, Nunc Pro Tunc,"] being ...unreversed, is a conclusive bar to [Petitioner's] claim. This would be so, of course, but for the fraud averred in the pleadings. "But in the eye of the law, fraud spoils everything it touches. The broad seal of the Commonwealth is crumbled into dust, as against the interest designed to be defrauded. Every transaction of life between individuals, in which it mingles, is corrupted by its contagion. Why then, should it find shelter in the decrees of courts? ***There*** is the last place on earth where it ought to find refuge.

But it is not protected by record, judgment or decree; whenever and wherever it is detected, its disguises fall from around it, and the lurking spirit of mischief, as if touched by the spear of Ithuriel, stands exposed to the rebuke and condemnation of the law": *Mitchell v. Kintzer*, 5 Pa. 216, 217 [1847]. This principle has never been doubted by us; on the contrary, it has often been recognized and applied: *Jackson v. Summerville*, 13 Pa. 359, 369 [1850]; *Phelps v. Benson*, 161 Pa. 418 [1894]; *Smith v. Markland*, 223 Pa. 605, 629 [1909]; *West Homestead Borough v. Erbeck*, 230 Pa. 316, 318 [1911].

APPENDIX K

Proof Beyond a Moral Certainty [1]

"[Comparative] stylistics [2] establish nonidentity of writer [of questioned writings]." On 13 October 1989, that provocatively evidentiary-titled writing (less the implied addends) appeared on the editorial page of the *Observer-Reporter* of Washington, PA. The provocation of that 1989 writings is here vastly enlarged.

That 1989 writing and this writing are premised on the telltale significance of the combination of the numerous stylistic alternatives in grammar and format, and the individualized habits and routine practices inherent in the repetitive reduction of like writing to paper. "Writer" is the focus in the 1989 writing. In this writing, "typist" is the focus -- more specifically, "nonidentity of typist."

Overview Item O-7e
"Comparative Stylistics (C.S.)
and
Gramformprints (GFP):
Their Application in Solving Questioned Writings,
Focusing on Lawyer-Logotyped Wills" (102 pp.)

Proof Beyond a Moral Certainty

"Nonidentity of typist" is presented as an exemplification of the coupling of comparative stylistics and the Socratic method [3]. The incisive, respective "matter-of-fact" and "clear-expression-of-a-truth" elements of those two techniques reach their epitome when premised on force of habit [4]. Force of habit is a peculiarly ingrained dimension of typewriting. Because of that peculiarity, "typist" is more appropriate than "writer" as the final word in the culminating sentence of the 1989 writing: "Discrepancies in clearly demonstrated [comparative] stylistic patterns serve, with a certainty analogous to fingerprints, to establish nonidentity of [typist]."

Three questions set the stage for the indubitable proof, and beyond, in justification of the above phrase, "with a certainty analogous to fingerprints":

A. Who didn't type the questioned writing?
B. Who typed the questioned writing?
C. How can answers to questions A and B be determined?

The following responses to the above questions include explanations why the question-C-determination relative to question A, is far more certain, and yet the reasons are much less demanding, than that of the same determination relative to question B.

Solutions premised on nonidentity of typist, do so in response to question A. Nonidentity determinations are premised on the inherently enlarged detectabilty associated with the negative in repetitive, like typewritings. The results are answers with consensual

minimal to zero doubt, even when premised on limited absences of known comparative stylistic patterns of a putative typist.

Solutions premised on identity of typist, do so in response to question B. Identity determinations are premised on the inherently reduced detectability associated with the affirmative in repetitive, like typewritings. The results are answers with arguably minimal to significant doubt, even when premised on a plurality of presences of known comparative stylistic patterns of a putative typist.

Consider the above response to question A, when the normally controlling "limited absences" are in reality, a "plurality of absences." Consider further, the void created by that plurality of absences, and the filling of that void by the comparative stylistic individualities of a supplanting typist. Under that not uncommon and expectantly combined set of realities, the justification of the phrase, "with a certainty analogous to fingerprints," takes on the attributes of *proof beyond a moral certainty*.

"Nonidentity," "pattern" and "justification" phenomena are here applied to questioned, repetitive, like typewritings. Upon reflection, it is apparent that those phenomena and their "moral certainty" reinforcements, are also applicable in solutions to many common problems -- usually with less "force-of-habit" idealism than here presented -- but nonetheless, as matters of every day's experience and reasoning.

Proof Beyond a Moral Certainty

[1] **Moral certainty**. That degree of assurance that induces a man of sound mind to act, without doubt, upon the conclusions to which it leads.... -- *Black's Law Dictionary*, Sixth Edition (1990).

[2] **Comparative stylistics.** An evidential technique focusing on nonidentity of typist of questioned writings. Matter-of-fact solutions are premised on comparisons of the numerous stylistics alternatives in grammar and format, and the individualized habits and routine practices inherent in the repetitive reduction of like writings to paper, with emphasis on typewritings. -- *Black's Law Dictionary*, Sixth Edition (1990).

[3] **Socratic [method].** [S]ystematic doubt and questioning...to elicit a clear expression of a truth supposed to be implicitly known by all rational beings. -- *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (1993).

[4] **Force of habit**. Behavior made automatic or involuntary by repeated practice. -- *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (1993).

See "C.S. & GFP," OVERVIEW items 0-7a to 0-7d.
21 December 1994
Robert J. Ciaffoni
Comparative Stylist